AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, N W
Washington, DC 20036

1-800-BANKERS
www.aba.com

World-Class Solutions, Leadership & Advocacy Since 1875

Edward L. Yingling
Executive Vice President
Tel: 202-663-5328
Fax: 202-663-7533
E-mail: eyinglin@aba.com

2 February 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket R-1167 (Regulation Z)
Docket R-1168 (Regulation B)
Docket R-1169 (Regulation E)
Docket R-1170 (Regulation M)
Docket R-1171 (Regulation DD

Dear Ms. Johnson,

The American Bankers Association ("ABA") is pleased to submit our comments on the Federal Reserve Board's ("Board") proposed amendments to Regulations Z, B, E, M, and DD and their respective Official Staff Commentaries. In addition, the proposal to Regulation Z includes several technical revisions to the staff Commentary.

The proposal makes the form of disclosures consistent among the various consumer protection regulations. Specifically, it adopts the "clear and conspicuous" standard, along with examples, currently contained in the Commentary to Regulation P (Privacy of Consumer Financial Information). While ABA appreciates the Board's stated intention to facilitate compliance and make disclosures more understandable, we believe that the proposals do neither. The proposals are unsuitable and unworkable, and implementation will impose huge costs on the industry. The subjectivity of the proposals will make compliance uncertain and spawn expensive lawsuits without improving the disclosures in any meaningful way. Indeed, in some cases, the disclosures and account documents called for would diminish consumer comprehension.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

"EXAMPLES" OF "CLEAR AND CONSPICOUS" PROPOSALS

Summary

The proposals' universal definition of "clear and conspicuous" means "designed to call attention to" and "reasonably understandable." Specifically, under the proposals, "reasonably understandable" disclosures:

- Present the information in the disclosures in clear, concise sentence, paragraphs, and sections;
- Use short explanatory sentences or bullet lists whenever possible,
- Use definite, concrete, everyday words and active voice whenever possible
- Avoid multiple negatives
- Avoid legal and highly technical business terminology whenever possible; and
- Avoid explanations that are imprecise and readily subject to different interpretations

Examples of disclosures that are "designed to call attention":

- Use plain-language heading to call attention to the disclosures
- Use a typeface and type size that are easy to read. Disclosures in 12 point type generally meet this standard. Disclosures printed in less than 12 point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard.
- Provide wide margins and ample line spacing
- Use boldface or italics for key words; and
- In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

In addition, the proposals strongly recommend segregation of required disclosures:

> Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

Overview

ABA strongly agrees with the principle that the disclosures required in the various consumer protection regulations should be clear and conspicuous. Indeed, that has been the standard for decades, a standard that appears generally to be working well. We have heard no complaints or outcry that current disclosures are not clear and conspicuous or that they are unsatisfactory, and the Board presents no such evidence. The intention to make the meaning of "clear and conspicuous" consistent throughout the consumer protection regulations, on the surface, also appears sensible and attractive. However, when applied practically, the proposals are clearly much more far reaching than they appear and represent a drastic change in the approach of the regulations: the

proposals basically transfer the responsibility of defining "clear and conspicuous" from the Board to the courts, without furthering the goal of making disclosures clear and conspicuous.

The cost of the proposals cannot be overstated. The cost of initial compliance itself is staggering. In effect, the proposals, if adopted, would require financial institutions to dismantle existing compliance systems that are based on decades of regulations and court interpretations, and recreate different systems that in the end will produce little if any improvement in consumer understanding. Every consumer related document, every form, account agreement, statement etc., in the financial institution will have to be reviewed and likely revised, including marketing materials. Changes will have to be made not just to forms, but to software systems, websites, telephone scripts, and advertisements. Staff will have to be trained, training and auditing manuals revised. Even then, the financial institution will not know for certain whether it complies until challenged by the courts or examiners. Continuing costs include substantially increased document production and mailing costs due to lengthier documents, as well as the costs related to risk management associated with lawsuits.

That the Board is proposing such drastic and comprehensive compliance modifications while it is requesting suggestions on how to reduce regulatory burden on the very same regulations is puzzling. One banker's cogent suggestion to control regulatory burden was, "To start, just hold still." Adopting these proposals would go in the opposite direction.

Other costs relate to the courts. The "examples" in the proposals will serve as a roadmap to challenge compliance in the courts, encouraging wasteful litigation. The challenges to compliance will come not only in expensive class action suits, but also raised in routine collection suits. The risks and uncertainty associated with potential court decisions could raise safety and soundness implications.

Beyond the massive costs, the proposals are simply unworkable and cannot be fixed. There are disclosures after disclosures, in regulation after regulation, that show why the proposed "examples" do not work. In many cases, rather than assisting consumers in understanding disclosures, they will confuse or misguide consumers or cause useful, but unrequired information to be omitted.

They also do not work because of their subjectivity. Debate could rage for years over whether a particular word is an "everyday" word in a particular part of the country. Reasonable minds could always argue that a sentence could be shorter. And we can expect challenges that disclosures use legal and technical terms: the disclosures, after all, deal with legal and technical matters. But they will still be challenged and some court or courts will find them noncompliant. The qualifiers that the lists are only "examples" and are required "whenever possible," offer little comfort when the financial institution is confronted in court or by examiners who simply ignore those qualifiers and interpret the "examples" as requirements. They are illusory safeharbors in the practical world.

Finally, the Board offers no evidence that the current standard does not work. Indeed, it is baffling that it proposes to model the Commentaries to the consumer protection regulations after Regulation P's Commentary when that that regulation is under review because its disclosures are considered deficient. Moreover, the disclosures of Regulation P are in nature different from those in the consumer protection

regulations. Regulation P addresses a single concept, an institution's *policy,* that is applied throughout the organization. In contrast, the consumer protection regulations address numerous and complicated terms and information, often specific to individual transactions and accounts. Moreover, the civil liability contained in the consumer protection regulations and absent in Regulation P adds considerable pressure to compliance and litigation costs and risks.

The proposal will impose significant compliance costs.

If they are adopted, financial institutions will have to review every single consumer financial product document and advertisement and catalog those containing required disclosures. This applies to every consumer financial product and contract. For every bank it means reviewing hundreds of agreements, forms, statements, webpages, and telephone scripts, even cassettes for blind people.

Once identified, required disclosures will have to be segregated from non-required disclosures and analyzed and revised. The revision effort will be time-consuming and expensive as staff and lawyers debate what are "everyday words," and whether "legal" and "technical" terms can be changed without altering their legal effect. We can expect that financial institutions would have to pay for focus groups and hire linguists or other similar specialists to analyze readability. In fact, this is what occurred with the Regulation P disclosures. And that was a single disclosure.

Once new terminology is decided, the financial institutions must endeavor to format the disclosures and address software demands, not an insignificant task. Software programs will have to be modified and in many places replaced: they will no longer be usable as the disclosures will no longer fit in the original fields. Old stock will have to be replaced.

In addition, there are the initial and continuing training costs for a long list of staff: compliance officers, legal staff, lending officers, auditors, branch and teller staff, etc.

It is difficult to estimate the costs of the change. One banker reported that when he requested estimates from his bank's staff, they responded it was impossible to estimate because they cannot fathom the depth and complexity of the proposals.

Regulation P, from which the proposals are drawn, requires disclosures of a much simpler, more straightforward nature than those of the consumer protection regulations, but the articulation and format challenges imposed by Regulation P were nevertheless significant. One large institution reported that after it had determined its Regulation P privacy policy, it took between six and eight months of dedicated staff to put the policy into words and format that it believed would comply with Regulation P. Compared to the regulations under consideration, the Regulation P message was fairly simple. Moreover, there was not the added pressure and burden of potential civil liability that is attached to the regulations under consideration.

Even the amendments to Regulation Z of several years ago, imposing font and other requirements on credit card solicitation disclosure boxes, were costly. The same large bank used six months of dedicated staff just to make the needed font and other changes, and those changes were far more modest than what is proposed.

For smaller institutions, the challenge is more daunting. In small institutions, bank staff wear multiple hats. The compliance officers often have other responsibilities beyond compliance. They will be less able to manage those other important functions if they are compelled to commit to retooling their entire compliance programs and making wholesale revisions to their consumer account disclosures. Ultimately, the costs of compliance, whether large or small institution, add to the consumers' price.

Courts will add to the costs.

The proposals will be a magnet for lawsuits.

That the proposals, if adopted, will spawn class actions suits should not be dismissed as an industry overreaction. Monitoring and managing class action suits are a critical aspect of risk management for financial institutions based on real cases. The proposals will significantly impact this critical risk management by multiplying the potential for litigation costs. The cost is not just measured by losses on a particular case, but by the costs of avoiding, settling, and defending such suits.

The proposals will provoke litigation by providing a clear basis for challenging compliance. The proposals offer the illusion of objectivity and specificity, but, in fact, are subjective, and therefore subject to endless potential litigation. Currently whether disclosures are "clear and conspicuous" is a question of fact based on an analysis of the specific disclosure. The proposals, however, apply general theories to all disclosures, whether or not they are appropriate for that particular disclosure. Whether the disclosures are clear and conspicuous will no longer be a question of looking at that particular disclosure, but whether that particular disclosure complied with all the "examples" enumerated in the commentary: Bullet points could have been inserted here, headings inserted there. This is a technical or legal term, not a "concrete" or "everyday" term. This single sentence could have been two sentences. The margins were not wide enough. The advertisement did not "call attention to the nature and significance of the information." The list goes on. The consequence is that all disclosures become fodder for plaintiffs attorneys and vulnerable to the second-guessing of countless courts.

The Board attempts to offer flexibility and safety in the proposals with qualifiers such as "whenever possible," "do not automatically violate the standard," and "the standard does not prohibit, " but those safeharbors are illusory. Given experience and history, it would be risky for a financial institution to assume that a court or examiner will not find violations for failing to comply with one of the "examples" or that a court or examiner will have a different opinion about whether a particular disclosure can be improved based on the "examples."

Collection suits will also create risk.

The risks and costs related to courts are not limited to class action suits driven by the reward of attorneys fees and statutory damages. The issue is also relevant with regard to collection efforts.

The challenge to comply with the proposal will arise in the course of collection suits, for example, in local courts all over the country. The defense will argue that the disclosures did not comply with one or more of the "examples." The court, unfamiliar with Regulation Z or general financial terms, will read the examples and documents literally and agree with the defense. Word then spreads that 1) the particular

documents of that institution are assailable; and 2) defendants should use the "examples" in the Commentaries in any collection suit to avoid repayment. Moreover, challenges to Regulation Z frequently arise in an emotional context, e.g., the borrower has defaulted and may lose a home. Sympathy for the consumer in such cases can distract courts from objectivity and reasoned Regulation Z analysis. The decisions may be based on the individual outcome, rather than the integrity of the regulation or the impact on the general public or industry. The proposals will give additional impetus for such decisions.

The proposals are unworkable and cannot be fixed and they make courts arbiters of "clear and conspicuous."

The "examples" listed in the proposal are appealing in concept, but in practice are not workable in the context of the majority of the specific requirements of the consumer protection regulations. Simply perusing any of the regulations and applying the "examples" to required disclosures will produce a multitude of questions about how to comply. As noted earlier, the "examples" create a lot of risky subjectivity. Rather than providing certainty and guidance, the regulations will leave a vacuum and invite challenge. In effect, the proposals shift the responsibility for rulemaking from the Board to the courts.

Financial institutions will never be certain whether they comply because ***every*** disclosure can ***always*** be challenged by citing one or all of the "examples." The permutations of how financial institutions may or may not comply are endless when the proposed lists are applied to the many required disclosures of the consumer protection regulations, too lengthy to list. Decades of interpretations and guidance will become meaningless, to be replaced by new rounds of expensive court decisions.

In many cases, application of the proposed "examples" will not improve consumer understanding.

The examples, in many cases, will not help consumers and in fact may leave them with less information that is useful. For example, the proposal provides that the required disclosures should be segregated. But this will result in illogically arranged information that consumers will find hard to follow and absorb. Related information will get separated and thus ignored. For example, balance information required under Regulation DD would be separated from a notice that the balance contributes to the "combined balance'' of all accounts that helps customers avoid fees. The examples are numerous.

Moreover, useful but unrequired information may well be omitted in order to fit the required disclosures on a single page. If fonts are increased to the 12 point type as proposed, financial institutions will delete useful, but unrequired information from account statements to save space. Statements would no longer include typical tables that assist customers in balancing their checking account and "coupons" for disputing transactions. Rather than providing dispute rights on the back of the periodic statement, some financial institutions will send an annual notice, which invariably cannot be found when the occasion for its use arises.

Regulation P is different from the consumer protection regulations.

It is perplexing that the Board is choosing to follow the standard provided in Regulation P when that regulation is under review, apparently because it needs improvement. However, even if the examples are appropriate for Regulation P, they are not appropriate for the consumer protection regulations.

The privacy policy disclosures of Regulation P and those of the typical consumer protection regulations are inherently different. Regulation P requires financial institutions to convey an institution's general policy on a single matter that applies across the institution to all products. In contrast, the disclosures of the consumer protection regulations convey complex, sometimes abstract, and often detailed terms that are usually unique to that transaction or account. In many cases, legal and technical terms are necessary: legal language is essential in order for the agreement to be enforceable, technical language in order to be accurate, as the regulations require. "Everyday" or "concrete" terms will change their meaning or leave ambiguity.

Moreover, the civil liability applied to consumer protection regulations that is not applied to Regulation P changes the complexion of the analysis. That an institution can be challenged in court, subject to costly statutory damages and attorneys' fees, or that borrowers may be absolved from repayment responsibility puts a different pressure on disclosure drafting and design. Each word --- and even each space -- must be debated and weighed carefully.

OTHER PROVISIONS RELATED TO REGULATION Z

Section 226.2(b)(5). The Board proposes to add an interpretative rule of construction stating that where the word "amount" is used to describe a disclosure requirement, it refers to a numerical amount throughout Regulation Z. The proposed interpretation is intended to address a court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. We agree with this new comment.

Comment 15(a)(2)-1. This proposed comment would be revised to address situations where a creditor fails to provide the required right of rescission form or designate an address for sending the rescission notice. The proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if, under the applicable state law, delivery to that person would be deemed to constitute delivery to the creditor or assignee.

We suggest that the proposed comment be revised to make the notice effective if the consumer sends it to the person or address to whom payments are to be sent. Connecting the issue to state laws creates uncertainty, confusion, and complexity. Moreover, sending it to the person or address to whom payments are to be sent is logical for the consumer.

Request for Information Regarding Debt Cancellation and Debt Suspension Agreements. Please refer to the letter of the American Bankers Insurance Association, a wholly owned ABA subsidiary which addresses this issue in depth.

CONCLUSION

ABA appreciates the Board's intention to facilitate compliance and improve the disclosures required by the various consumer protection regulations. However, we stress that the proposal to apply the "clear and conspicuous" examples of Regulation P to the consumer protection regulations is simply unworkable. Accordingly, they should be withdrawn. The costs of dismantling and rebuilding the existing compliance systems are huge. Moreover, even after those expenses and painstaking debate on how to comply, financial institutions are still vulnerable: creative attorneys will only have to cite one of the proposed "examples" to find error. Courts, rather than the Board, will be interpreting the statute and inconsistent determinations will create confusion. Finally, the proposals are not suitable for the types of account and transactions covered by the regulations. Rather than enhancing disclosures, in many cases, they will deprive consumers of logical and complete information.

We appreciate the opportunity to comment on this important matter and would be pleased to provide additional information.

Sincerely,

Edward L. Yingling

AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

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March 23, 2004

The Honorable Fred Bernanke, Governor
The Honorable Susan Bies, Governor
The Honorable Edward Gramlich, Governor
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 205551

RE: Supplemental Comment on Proposed New Clear and Conspicuous Disclosures - Docket R-1167 (Regulation Z); Docket R-1168 (Regulation B); Docket R-1169 (Regulation E); Docket R-1170 (Regulation M); and Docket R-1171 (Regulation DD)

Dear Governors Bernanke, Bies and Gramlich:

On March 1,2004, you were gracious enough to meet with several bankers and representatives of financial industry trade associations to discuss their concerns with the proposed new clear and conspicuous disclosure requirements for Regulations B, E, M, Z, and DD. One of those bankers, Kathleen Curtis, is a member of the American Bankers Association's' Compliance Executive Committee[2] (CEC) and was attending to specifically answer any of your questions about the potential impact of these proposals on community banks. Because of the number of attendees and the complexity of the questions asked by you, the CEC believes that it might be helpful to expand upon Kathleen's brief comments. These comments should be considered supplemental to the ABA's comment letter dated February 2, 2004, already filed with the Board.

Extent of the Burden

As ABA wrote in that letter, the industry believes that the Board's proposal to define a new standard for disclosure under these regulations poses enormous initial cost:

[1] The American Bankers Association brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes AUA the largest banking trade association in the country.

[2] ABA's Compliance Executive Committee consists of regulatory compliance managers representing banks from a wide range of assets and geography. It is the mission of the committee to provide strategic insight and advice to the ABA on legislation, regulations and compliance educational training and products.

In effect, the proposals, if adopted would require financial institutions to dismantle existing compliance systems that are based on decades of regulations and court interpretations, and recreate different systems that in the end will produce little if any improvement in consumer understanding. Every consumer related document, every form, account agreement, statement etc., in the financial institution will have to be reviewed and likely revised, including marketing materials. Changes will have to be made not just to forms, but to software systems, websites, telephone scripts, and advertisements. Staff will have to be trained, training and auditing manuals revised.

We believe that all of this is particularly true and even more challenging for community banks. Small community bank compliance officers are typically either part-time employees or are full time employees who also fulfill other critical duties at their banks. Nevertheless, these compliance officers must ensure that the bank's staff have the proper training, references and resources to do their jobs in compliance with federal and other applicable rules and regulations; audit to test for compliance; manage the bank's response to changes to existing regulations and lead implementation of new regulations; properly inform the Board of Directors of Compliance risks; and work with auditors and examiners. In short, it is already more than one person can do. On top of this, the Board now proposes to add a major new task.

The potential costs to community banks to implement this proposed rule is staggering. While it is impossible to provide accurate estimates, we can provide some estimate of the order of magnitude of the task. Complicating the cost factor for small institutions is the fact that they commonly rely on software vendors for compliance to produce required documents. One, these banks will pay the costs for the vendors to review the new standard and redesign new documents and software. Two, these small institutions will incur new risks and costs associated with litigation because vendors will no longer be able to warrant that their products comply with the regulations due to the subjectivity and uncertainty of the proposed rules, if adopted. Three, even though they rely on vendors, they will still have to use significant and scarce resources to review and revise virtually every document associated with their consumer products.

In addition, we stress that the proposals ignore the impossible challenge of trying to put legal terms into "everyday words." Banks that for years have relied on model forms and court interpretations will be banks vulnerable to lawsuits because they will be unable to reconcile these two pressures without attracting a lawsuit, either to enforce a contract or to defend a claim that they violated a regulation.

Increased Costs for Vendor Services

Every time a regulation changes, banks have to purchase new stock and software from vendors and retrain employees. The magnitude of the proposed changes, which affects every document associated with every consumer product, will mean major new purchases from vendors: banks will basically have to replace all existing programs.

Litigation Exposure

Many of the software vendors rely on the model forms and language in the regulations and other language that has been tested in litigation. This allows them to provide compliance warranties to assure their bank customers that the documents they supply comply with the regulations. This puts banks in a defensible position today. The difficulty with the proposed new definition of "clear and conspicuous," though, is how will the vendors and the compliance officer know whether their disclosures comply? In place of the certainty of the models, developed and tested in litigation over many years, which vendors and banks have come to rely upon, the proposal substitutes vagueness and subjectivity. If the proposals are adopted, vendors, notwithstanding their teams of lawyers, will not be able to continue to guarantee that their language meets the new standard. Accordingly, banks

using the vendors will lose the existing warranties that they rely on today. Worse, even if the vendor does certify the product, the bank could still be sued because a customer can claim that certain words are not in his or her "everyday" language. Definitions would be determined in the courts at the expense of banks, many of them small banks. And it will likely take years before the law in this area is once again settled.

The potential for litigation should not be understated or dismissed. Robert Cook and David Darland estimate that the early years of the Truth in Lending Act saw about 2,000 TILA cases filed in federal court every year.[3] Many more cases were filed in state courts. Again, after the Truth in Lending Simplification Act of 1980, cases numbered in the hundreds every year. As the authors put it:

> Even though occasions for TIL violations have been reduced, violations still carry the sanctions of actual and statutory damages, plus costs and attorneys fees. *For consumers who are in default or otherwise under financial strain, assertions of TIL violations – obvious or colorable – may still offer tactical advantage or leverage.* This use of TIL sanctions becomes even more attractive in a recession economy.[4] [Emphasis added.]

As explained in our earlier letter, adoption of the proposed new standard for disclosures will offer many more opportunities for such legal tactics, as the certainty of the previous decisions is lost in the proposed reforms and replaced by subjectivity. Community banks will be the most vulnerable to these tactics, because most community banks lack in-house counsel and cannot afford to engage in lengthy litigation. Court cases are neither cheap nor easy to defend. And costs are not limited to actual costs: they include costs incurred to avoid or discourage litigation. Additional costs to the bank will arise to repair its reputation tarnished by the lawsuit. A bank, no matter how small, is easily construed as a "big bad bank" against a consumer in court.

Other Costs

Even though small banks may be able to rely upon vendors for documentation software, they will still have to incur additional costs to review brochures, monthly account statements, ATM receipts, marketing materials, etc., and would likely have to revise and reprint most, if not all, of these. Small banks can be expected to take the most conservative approach to compliance, since they lack the in-house legal and compliance resources to test alternatives. Thus, for example, they will use 12-point type and generous margins on their disclosures,[5] ballooning their paperwork, printing expenses, mailing expenses, and probably consumer frustration with additional mounds of "disclosure."

These are not insignificant costs. Today, if a regulatory change requires revision to a pre-printed form, a community bank will follow the model language and will not usually go to the expense of hiring an attorney to review the new form. And it might affect only one aspect of a single form. With this proposed regulation, however, because of its uncertainty and far reaching impact, small banks, even if they rely on vendors, will likely have to hire attorneys to be sure, for example, that they have used "everyday language" and that they have properly "called attention to" "significant" disclosures. There are many, many forms that would need review; and after all of this expense, there is still no certainty for the bank. The role of a small bank compliance officer to help the bank manage risk and unnecessary expenses would be made almost impossible.

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[3] Rohner, Ralph, and Miller, Fred, Truth in Lending, (American Bar Association Section on Business Law (Chicago, 2000), p. 786.

[4] Id., p. 789.

[5] We attach as Appendix A, a current HELOC notice from a small bank, and as Appendix B, a proposed revision of it by converting to 12-point font and using a 1 inch "ample" margin. The compliance officer notes that "[j]ust those two changes inakes a two page document that can be copied front and back onto one piece of legal size paper, into a five page document that will take three pieces of legal size paper."

Everyday Terms

We share the Board's concern that some language in loan and deposit documents map seem difficult to understand for some customers, but that language is that way: 1) because it is what the regulations themselves tell us to place in the document;, 2) because the documents form a legal contract as the basis of the transaction and thus require legal terms for precision; or 3) because past court rulings have given safe harbors to the use of specific language. Annual percentage rate and annual percentage yield are not everyday terms, but must be used under the regulations. The proposed clear and conspicuous rule requirement of everyday terms does not adequately address the legally complex nature of these agreements and requirements of these regulations (such as a vehicle consumer lease under Regulation M). Further, the proposed new standard appears to wipe away the years of experience we have painfully and expensively gathered to comply with disclosure regulations.

The current model forms in these regulations assure banks that they have complied with regulatory requirements, but the clear and conspicuous proposals do not provide assurance that the model forms published by the Federal Reserve will continue to be effective and safe to use. This will leave the resolution of these questions to banks and courts to figure out if the words used on their forms comply with the regulations. We repeat: the potential cost of these tests is impossible to estimate, but it is certainly possible to conclude that these costs will be enormous.

Conclusion

Section V of the proposal states that the amendments are not expected to have any significant impact on small entities. The community bank members of our committee, as explained above, believe that this is a clearly erroneous assessment. In fact, many bankers, when consulted about the impact of this proposal, asked how this proposal could have been issued by the Board in the middle of the comment period requesting suggestions from bankers on **how to reduce regulatory burden from Regulations B and Z**, in the lending regulations segment of the mandated regulatory review under Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

As a whole, the ABA Compliance Executive Committee respectfully requests that the Federal Reserve withdraw this proposal. Certainly, the goal of providing consumers with more meaningful disclosures is laudable and one which ABA supports. However, these proposals do not achieve that goal and are potentially ruinously expensive. If you have further questions, please contact Nessa Feddis at 202-663-5433 or nfeddis@aba.com or Paul Smith at 202-663-5331 or at psrnith@aba.com.

Sincerely,

The American Bankers Association Compliance Executive Committee

CAPITAL BANK APPENDIX A

HOME EQUITY LINE OF CREDIT AGREEMENT
IMPORTANT TERMS OF OUR HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our HOME EQUITY LINE OF CREDIT (the "Plan"). You should read it carefully and keep a copy for your records.

AVAILABILITY OF TERMS. All of the terms described below are subject to change. If any of these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with your application.

SECURITY INTEREST. We will take a security interest in your home. You could lose your home if you do not meet the obligations in your agreement with us.

POSSIBLE ACTIONS.

Termination and Acceleration. We can terminate the Plan and require you to pay us the entire outstanding balance in one payment, and charge you certain fees, if any of the following happen:

(a) You commit fraud or make a material misrepresentation at any time in connection with the Plan. This can include, for example, a false statement about your income, assets, liabilities, or any other aspect of your financial condition.

(b) You do not meet the repayment terms of the Plan.

(c) Your action or inaction adversely affects the collateral for the Plan or our rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a senior lien on the dwelling without our permission, foreclosure by the holder of another lien or the use of funds or the dwelling for prohibited purposes.

Suspension or Reduction. In addition to any other rights we may have, we can suspend additional extensions of credit or reduce your credit limit during any period in which any of the following are in effect:

(a) The value of your dwelling declines significantly below the dwelling's appraised value for purposes of the Plan. This includes, for example, a decline such that the initial difference between the credit limit and the available equity is reduced by fifty percent and may include a smaller decline depending on the individual circumstances.

(b) We reasonably believe that you will be unable to fulfill your payment obligations under the Plan due to material change in your financial circumstances.

(c) You are in default under any material obligation of the Plan. We consider all of your obligations to be material. Categories of material obligations include, but are not limited to, the events described above under Termination and Acceleration, obligations to pay fees and charges, obligations and limitations on the receipt of credit advances, obligations concerning maintenance or use of the dwelling or proceeds, obligations to pay and perform the terms of any other deed of trust, mortgage or lease of the dwelling, obligations to notify us and to provide documents or information to us (such as updated financial information), obligations to comply with applicable laws (such as zoning restrictions), and obligations of any guarantor or co-maker. No default will occur until we mail or deliver a notice of default to you, so you can restore your right to credit advances.

(d) We are precluded by government action from imposing the annual percentage rate provided for under the Plan.

(e) The priority of our security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit limit.

(f) We have been notified by governmental authority that continued advances may constitute an unsafe and unsound business practice.

(g) The maximum annual oercentaae rate under the Plan is reached.

Change in Terms. We may make changes to the terms of the Plan if you agree to the change in writing at that time if the change will unequivocally benefit you through the remainder of the Plan, or if the change is insignificant (such as changes relating to our data processing systems).

FEES AND CHARGES. In order to open and maintain an account, you must pay certain fees and charges.

	Amount	**When Charged**
Life of Loan Flood Hazard Determination:	$20.00	At closing
Loan Documentation Fee:	$20.00	At closing
Check Printing Charge	Free	N/A

	Amount	**When Charged**
NSF Handling Fee	$5.00	At the time a payment is returned to us for non-sufficient funds
Stop Payment Fee	$25.00	At the time you request a Stop Payment

	Amount
Title Exam Fee	$150.00
Title Company Settlement Fee	$250.00
Title Insurance Premium	$2.50/$1,000 of loan amount
Title Company Document Preparation	$25.00
Tax Certificate	$25.00
Federal Express/Messenger used by Title Company	$20.00
Clerk's Recording Fee for Deed of Trust	$60.00
Appraisal Fee	$350.00
Transfer Tax (PG County Only)	1.5% of loan amount
Recordation Taxes – Montgomery & PG Counties	$4.40/$1,000 of loan amount
Recordation Taxes – Northern Virginia Counties	$2.00/$1,000 of loan amount

PROPERTY INSURANCE. You must carry insurance on the property that secures the Plan.

MINIMUM PAYMENT REQUIREMENTS. You can obtain advances of credit during the following period: You may request advances for a period of 5 years from the note date. (the "Draw Period'?. After the Draw Period ends, the repayment period will begin. You will no longer be able to obtain credit advances. The length of the repayment period is as follows: You will have 10 years to repay your plan balance (the "repayment period"). Each of these monthly payments will be due on the 20" day of each month. Initially, your Regular Payment will equal the amount of your accrued finance charges. You will make 60 of these payments. Your payments will be due monthly. Thereafter your Regular Payment will be based on an amortization of your balance at the start of the new payment period plus all accrued finance charges as shown below or $100.00, plus all accrued finance charges, whichever is greater. Your payments will be due monthly.

Range of Balances	Regular Payment Calculation
All Balances	1/120th of your balance at the start of the payment period plus all accrued finance charges

Your "Minimum Payment" will be the Regular Payment, plus any amount past due and all other charges. In any event, if your Credit Line balance falls below $100.00, you agree to pay your balance in full.

MINIMUM PAYMENT EXAMPLE. If you made only the minimum payment and took no other credit advances, it would take 13 years and 4 months to payoff a credit advance of $10,000.00 at an ANNUAL PERCENTAGE RATE of 10.000%. Initially, you would make 60 monthly payments ranging from $76.71 to $84.93. Then you would make 100 monthly payments ranging from $100.82 to $184.93.

TRANSACTION REQUIREMENTS. The following transaction limitations will apply to accessing your Credit Line by writing a Line Check.

Minimum Advance Amount. The minimum amount of any credit advance that can be made on your Credit Line is as follows: Advances must be in a minimum amount of $500.00. This means any Line Check must be written for at least the minimum advance amount.

TAX DEDUCTIBILIN. You should consult a tax advisor regarding the deductibility of interest and charges for the Plan.

ADDITIONAL HOME EQITY PROGRAMS, Please ask us about our other available Home Equity Line of Credit plans.

VARIABLE RATE FEATURE. The Plan has a variable rate feature. The annual percentage rate (corresponding to the periodic rate), the amount of the final payment, and the minimum payment amount can change as a result. The annual percentage rate does not include costs other than interest.

The Index. The annual percentage rate is based on the value of an index (referred to in this disclosure as the "index"). The Index is the Wall Street Journal Prime Rate. Information about the Index is available or published in the Wall Street Journal listing of Money Rates. We will use the most recent index value available to us as of the date of any annual percentage rate adjustment. If the Index is no longer available. We will choose a new Index and margin. The new Index will have an historical movement substantially similar to the original Index, and the new index and margin will result in an annual percentage rate that is substantially similar to the rate in effect at the time the original Index becomes unavailable.

Annual Percentage Rate. To determine the annual percentage rate that will apply to your account, we add a margin to the value of the Index. A change in the Index rate generally will result in a change in the annual percentage rate. The amount that your annual percentage rate may change also may be affected by the lifetime annual percentage rate limits, as discussed below.

Please ask us for the current Index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statement that we send you.

FREQUENCY OF ANNUAL PERCENTAGE RATE ADJUSTMENTS. Your annual percentage rate can change Monthly on the 20th day of each month. There is no limit on the amount by which the annual percentage rate can change during any one year period. However, under no circumstances will your ANNUAL PERCENTAGE RATE EXCEED 24.00% per annum at any time during the term of the Plan.

MAXIMUM RATE AND PAYMENT EXAMPLE.

Draw Period. If you had an outstanding balance of $10,000.00, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of 24.000% would be $203.84. This annual percentage rate could be reached at the time of the 2nd payment.

Repayment Period. If you had an outstanding balance of $10,000.00 the minimum payment at the maximum ANNUAL PERCENTAGE RATE of 24.000% would be $303.84. This annual percentage rate could be reached at the time of the 1st payment during the repayment period.

PREPAYMENT. You may prepay all or any amount owing under the Plan at any time without penalty.

HISTORICAL EXAMPLE. The example below shows how the annual percentage rate and the minimum payments for a single $10,000.00 credit advance would have changed based on changes in the Index from 1986 to 2000. The Index values are from the following reference period: the last business day in July. While only one payment per year is shown, payments may have varied during each year. Different outstanding principal balances could result in different payment amounts.

The table assumes that no additional credit advances were taken and that only the minimum payment was made. It does not necessarily indicate how the Index or your payments would change in the future.

INDEX TABLE

Year (the last business Day in July)	Index (Percent)	Margin (1) (Percent)	ANNUAL PERCENTAGE RATE	Monthly Payment (Dollars)
1986	8.000	1.50	9.50	80.68
1987	8.250	1.50	9.75	82.81
1988	9.550	1.50	11.050	83.34
1989	10.500	1.50	12.000	83.34
1990	10.000	1.50	11.500	83.34
1991	8.500	1.50	10.000	169.45
1992	6.000	1.50	7.50	135.54
1993	6.000	1.50	7.500	135.54
1994	7.250	1.50	8.750	136.08
1995	8.750	1.50	10.250	136.28
1996	8.250	1.50	9.750	125.30
1997	8.250	1.50	9.750	125.30
1998	8.500	1.50	10.000	109.16
1999	8.000	1.50	9.50	99.68
2000	8.500	1.50	10.000	91.50
2001				

(1) This is a margin we have used recently, your margin may be different.

BORROWER ACKNOWLEDGMENT

The Borrower, after having read the contents of the above disclosure, acknowledges receipt of this Disclosure Statement and further acknowledges that this Disclosure was completed in full prior to its receipt. The Borrower also acknowledges receipt of the handbook entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines Of Credit".

X_____ _____

Borrower **Date**

X_____ _____

Borrower **Date**

CAPITAL BANK **APPENDIX B**

HOME EQUITY LINE OF CREDIT AGREEMENT
IMPORTANT TERMS OF OUR HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our HOME EQUITY LINE OF CREDIT (the "Plan"). You should read it carefully and keep a copy for your records.

AVAILABILITY OF TERMS. All of the terms described below are subject to change. If any of these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you paid to us or anyone else in connection with your application.

SECURITY INTEREST. We will take a security interest in your home. You could lose your home if you do not meet the obligations in your agreement with us.

POSSIBLE ACTIONS.

Termination and Acceleration. We can terminate the Plan and require you to pay us the entire outstanding balance in one payment, and charge you certain fees, if any of the following happen:

(d) You commit fraud or make a material misrepresentation at any time in connection with the Plan. This can include, for example, a false statement about your income, assets, liabilities, or any other aspect of your financial condition.

(e) You do not meet the repayment terms of the Plan.

(f) Your action or inaction adversely affects the collateral for the Plan or our rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a senior lien on the dwelling without our permission, foreclosure by the holder of another lien or the use of funds or the dwelling for prohibited purposes.

Suspension or Reduction. In addition to any other rights we may have, we can suspend additional extensions of credit or reduce your credit limit during any period in which any of the following are in effect:

(h) The value of your dwelling declines significantly below the dwelling's appraised value for purposes of the Plan. This includes, for example, a decline such that the initial difference between the credit limit and the available equity is reduced by fifty percent and may include a smaller decline depending on the individual circumstances.

(i) We reasonably believe that you will be unable to fulfill your payment obligations under the Plan due to material change in your financial circumstances.

(j) You are in default under any material obligation of the Plan. We consider all of your obligations to be material. Categories of material obligations include, but are not limited to, the events described above under Termination and Acceleration, obligations to pay fees and charges, obligations and limitations on the receipt of credit advances, obligations concerning maintenance or use

of the dwelling or proceeds, obligations to pay and perform the terms of any other deed of trust, mortgage or lease of the dwelling, obligations to notify us and to provide documents or information to us (such as updated financial information), obligations to comply with applicable laws (such as zoning restrictions), and obligations of any guarantor or co-maker. No default will occur until we mail or deliver a notice of default to you, so you can restore your right to credit advances.

(k) We are precluded by government action from imposing the annual percentage rate provided for under the Plan.

(l) The priority of our security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit limit.

(m) We have been notified by governmental authority that continued advances may constitute an unsafe and unsound business practice.

(n) The maximum annual percentage rate under the Plan is reached.

Change in Terms. We may make changes to the terms of the Plan if you agree to the change in writing at that time if the change will unequivocally benefit you through the remainder of the Plan, or if the change is insignificant (such as changes relating to our data processing systems).

	Amount	**When Charged**
Life of Loan Flood Hazard Determination:	$20.00	At closing
Loan Documentation Fee:	$20.00	At closing
Check Printing Charge	Free	N/A

	Amount	**When Charged**
NSF Handling Fee	$5.00	At the time a payment is returned to us for non-sufficient funds
Stop Payment Fee	$25.00	At the time you request a Stop Payment
Late Charges: Your payment will be late if it is not received by us within 10 days of the "payment Due Date" shown on your periodic statement. If your payment is late we may charge you 5.000% of the payment of $5.00 whichever is areater.		

Third Party Fees. You must pay certain fees to third parties such as appraisers, credit reporting firms, and government agencies. These third party fees generally total between $965.00 for a $50,000 line secured by a residence in the District of Columbia and $1,935.00 for a $50,000 line secured by a

	Amount
Title Exam Fee	$150.00
Title Company Settlement Fee	$250.00
Title Insurance Premium	$2.50/$1,000 of loan amount
Title Company Document Preparation	$25.00
Tax Certificate	$25.00
Federal Express/Messenger used by Title Company	$20.00
Clerk's Recording Fee for Deed of Trust	$60.00
Appraisal Fee	$350.00
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